

**REMARKS**

**I. Introduction**

Claims 1-6 are currently pending. Claim 1 has been amended, support for which is found throughout the specification, for example, on page 8, lines 2-8. No new matter has been added.

In view of the foregoing amendments and the following remarks, Applicants respectfully submit that the claims are allowable, the case be allowed and the application be passed to issue.

**II. Objections to the Specification**

The Examiner objected to the title of the application as allegedly not being descriptive. Applicant respectfully submit that the foregoing amendment to the title is descriptive and indicative of the invention to which the claims are directed. Therefore, withdrawal of the objected is requested.

**III. Claim Rejections under 35 U.S.C. § 112, first paragraph**

Claims 1-6 were rejected under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the enablement requirement. Applicants respectfully disagree.

On page 3 of the Office Action mailed June 22, 2009, the Examiner asserts that in order for one of ordinary skill in the art to understand the enablement of the claims, Applicant should clearly describe how the claimed properties for the active material are obtained in relation to the sample which did not meet the requirements.

However, Applicants submit that, the specification does clearly describe how the claimed properties for the active material are obtained in relation to the sample, which did not meet the requirements. For example, Tables 1 and 2, show that nickel oxyhydroxide satisfying the

physical property values defined in claim 1 of the present invention can be obtained, by at least setting the reaction atmosphere temperature to 40° C, the added amount of the oxidant to 1, 1.2, or 1.4 equivalents, and the oxidation treatment time (normalized value) to 2. Furthermore, when the added amount of the oxidant is 1 or 1.2 equivalents and the reaction atmosphere temperature is 40° C, nickel oxyhydroxide satisfying the physical property values defined in claim 1 of the present invention can be obtained, even if the oxidation treatment time (normalized value) is set to 1.5. That is, when the added amount of the oxidant is 1 or 1.2 equivalents, nickel oxyhydroxide as mentioned above can be obtained, by setting the reaction atmosphere temperature to 40° C and setting the oxidation treatment time (normalized value) to 1.5-2.

As such, it is respectfully submitted that the specification clearly describes how claimed properties for the active material are obtained in relation to the sample, which did not meet the requirements, i.e. **by setting the reaction atmosphere temperature to 40° C and setting the oxidation treatment time (normalized value) to 1.5-2.**

Thus, claim 1-6 clearly meet the requirements of 35 U.S.C. § 112, and therefore the rejection should be withdrawn. Accordingly, claims 1-6 are allowable.

**IV. Claim Rejections under 35 U.S.C. § 102(b) or in the alternative under 35 U.S.C. § 103(a)**

Claims 1, 2, 5 and 6 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly being obvious over Dansui et al., (U.S. 6,074,785). Applicants respectfully disagree.

However, in an effort to expedite prosecution, claim 1 has been amended and now recites, in pertinent part, **an alkaline primary battery having a gelled negative electrode comprising zinc powder serving as a negative electrode active material.**

At a minimum, Dansui does not teach or suggest an alkaline **primary battery having a gelled negative electrode comprising zinc powder serving as a negative electrode active material.**

In contrast, Dansui is directed to an alkaline storage battery, i.e., an alkaline *secondary* battery. In contrast to the subject matter recited in instant claim 1, Dansui aims to provide a nickel metal-hydride storage battery including improved nickel hydroxide, the energy density of which is increased. That is, Dansui has a completely different objective as compared to the subject matter of claim 1.

Importantly, Dansui does not teach or suggest a **primary battery having a gelled negative electrode comprising zinc powder serving as a negative electrode active material**, but rather Dansui, teaches that a hydrogen-absorbing alloy is used as the negative electrode active material (see, Dansui col. 6, line 4).

Furthermore, the mean valence, H/W ratio and diffraction peak for spherical oxyhydroxide can be varied, (see Tables 2 and 3), and therefore these **are not inherent and uniform characteristics** as alleged by the Examiner on page 6 of the Office Action mailed June 22, 2009.

Therefore, it is clear that Dansui fails to teach or suggest all of the elements of claim 1. Accordingly, it is respectfully submitted that claim 1 is allowable. Furthermore, claims 2-6 depend from and further define the subject matter recited in claim 1 and therefore are also allowable.

V. **Claim Rejections under 35 U.S.C. § 103(a)**

Claims 3 and 4 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Dansui in view of Tanigawa. Applicants respectfully disagree.

As discussed above in reference to claim 1, Dansui fails to teach or suggest all of the elements of claim 1. This is at least because, Dansui fails to teach or suggest a primary battery **having a gelled negative electrode comprising zinc powder serving as a negative electrode active material**. Rather, Dansui teaches that a hydrogen-absorbing alloy is used as the negative electrode active material (see, Dansui col. 6, line 4).

Furthermore Tanigawa fails to cure the deficiencies of Dansui, at least because Tanigawa also fails to teach or suggest a primary battery **having a gelled negative electrode comprising zinc powder serving as a negative electrode active material**.

In contrast, Tanigawa is directed to a method for producing a positive electrode active material for an alkaline storage battery, and in Tanigawa, (like Dansui) a hydrogen-absorbing alloy is used as the negative electrode active material (paragraph 0107).

Therefore, it is clear that the cited prior art references fail to teach or suggest all of the elements of claim 1. Accordingly, it is respectfully submitted that claim 1 is allowable.

Furthermore, claims 2-6, (including claims 3 and 4) depend from and further define the subject matter recited in claim 1 and therefore are also allowable.

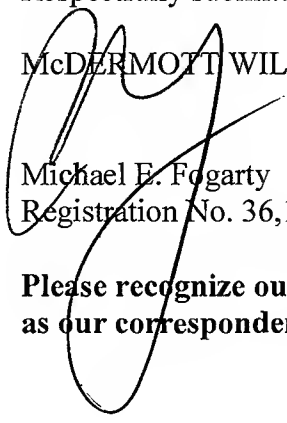
In view of the above remarks, Applicants submit that this application should be allowed and the case passed to issue. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated to expedite the prosecution of the application.

**Application No.: 10/567,347**

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

  
Michael E. Fogarty  
Registration No. 36,139

600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
Phone: 202.756.8000 MEF:ajb  
Facsimile: 202.756.8087  
**Date: September 22, 2009**

**Please recognize our Customer No. 53080  
as our correspondence address.**